



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-H-H-S-, INC.

DATE: MAR. 13, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a home healthcare provider, seeks to employ the Beneficiary as an operations manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage. A motion to reopen was denied by the Director. The Petitioner filed an appeal, which we dismissed. Like the Director, we found that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. We dismissed four subsequent motions to reopen and reconsider on the same ground.

The case is now before us on the Petitioner's fifth motion to reopen and motion to reconsider. Upon review, we will deny the combined motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

At issue before us is whether the Petitioner has demonstrated its ability to pay the proffered wage. A petitioner must establish that it has the ability to pay the proffered wage, as stated on the labor certification, from the priority date of the petition until the beneficiary obtains lawful permanent

residence. 8 C.F.R. § 204.5(g)(2).¹ In this case, the proffered wage is \$156,520 per year, and the priority date is September 22, 2010.

In our previous decision we found that although the Petitioner has employed the Beneficiary since before the priority date, the wages paid to the Beneficiary, as indicated on the Forms W-2, Wage and Tax Statements, submitted by the Petitioner, were less than the proffered wage in each of the years 2010-2016. We also found that the Petitioner did not have sufficient net income or net current assets, as recorded on its federal income tax returns, to cover the difference between the proffered wage and the wages paid to the Beneficiary 2010 and 2011, and that no tax returns had been submitted from which to make that calculation for 2015 or 2016. In addition, we found that the Petitioner did not demonstrate its ability to pay the combined proffered wages of its other I-140 petitions or that the totality of its circumstances established its continuing ability to pay the proffered wage.

A. Motion to Reopen

In support of the current motion to reopen, the Petitioner submits copies of its federal income tax returns (Forms 1120) for the years 2010-2016, some of which were already in the record. They show that the Petitioner's net current assets in the years 2012-2014 and 2016 exceeded the proffered wage. They also show that in 2010, 2011, and 2015 the combined total of the wages paid to the Beneficiary and the Petitioner's net income or net current assets (whichever was greater) was below the proffered wage. Thus, the Petitioner has not established its continuing ability to pay the proffered wage from the priority date of September 22, 2010, onward based on the wages paid to the Beneficiary in any year from 2010 to 2016. Nor has it established its continuing ability to pay based on the wages paid to the Beneficiary in combination with the Petitioner's net income or net current assets in 2010, 2011, or 2015.

Furthermore, as discussed in previous decisions, the Petitioner must establish that its job offer is realistic not only for this Beneficiary, but for all of the beneficiaries of its other petitions. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). USCIS records indicate that the Petitioner filed at least 15 other I-140 immigrant petitions from 2007 to 2017, some of which were approved and others of which are pending. The Petitioner must demonstrate its ability to pay the combined proffered wages of this Beneficiary and the beneficiaries

¹ A petitioner may establish its ability to pay the proffered wage if it has employed the beneficiary at a salary equal to or greater than the proffered wage. A petitioner may also establish its ability to pay the proffered wage if it has net income or net current assets in a given year that equal or exceed the proffered wage or the difference between the proffered wage and wages paid to the beneficiary, provided it can pay the proffered wages of its other employment-based immigrant petitions as well. See *Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014). If the above factors are insufficient to establish a petitioner's ability to pay the proffered wage, U.S. Citizenship and Immigration Services (USCIS) may consider other factors in a "totality of the circumstances" analysis. See *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

of all other petitions that were pending, approved, or filed after this petition's priority date of September 22, 2010. The Petitioner must establish its ability to pay the combined proffered wages from September 22, 2010, until the other beneficiaries obtain lawful permanent resident status.² See *Patel v. Johnson*, 2 F.Supp. 3d at 124 (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). In support of the current motion the Petitioner submits a list of its other petitions and their current status, but provides no information regarding the proffered wages of these petitions or the wages paid to any of the beneficiaries. For this reason as well, therefore, the Petitioner has not established its continuing ability to pay the proffered wage.

While we may consider the totality of the Petitioner's circumstances in assessing its ability to pay the proffered wage, see *Matter of Sonogawa*, 12 I&N Dec. at 614-15, we already conducted totality of the circumstances analyses in four of our previous decisions. Aside from the Petitioner's federal income tax returns for 2015 and 2016, the only new evidence submitted in support of the current motion is financial documentation, including bank account statements and unaudited financial statements, from 2017. None of these materials are required documentation under 8 C.F.R. § 204.5(g)(2), and none of it addresses the prior years of 2010, 2011, and 2015 for which we have previously found that the Petitioner did not establish its ability to pay the proffered wage. The Petitioner states that it has been in business since 1999, but no federal tax returns, annual reports, or audited financial statements have been submitted for any year before 2010. From 2010 to 2016, as indicated on the Petitioner's federal tax returns, the volume of its business was fairly static, with gross receipts rising modestly from 2010 to 2016. Thus, the Petitioner's claim of longstanding and significant "financial growth throughout the years" is not supported by the evidence in the record. We conclude once again, therefore, that the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward based on the totality of its circumstances.

For the reasons discussed above, the new evidence submitted in support of the current motion does not establish the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

B. Motion to Reconsider

The Petitioner does not state any reason for reconsideration of our prior decision. The Petitioner does not allege that our previous decision was based on an incorrect application of law or policy, and has not submitted any pertinent precedent decisions, statutes, regulations, or agency policy showing an incorrect application of law or of USCIS or DHS policy. Thus, the Petitioner has presented no basis for us to reconsider our previous finding that the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward.

² A petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration, or established eligibility for the immigrant benefit sought.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-H-H-S-, Inc.*, ID# 962584 (AAO Mar. 13, 2018)